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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,735	03/16/2004	Stacy Barrows	650033.15148	1838
7590	06/30/2005		EXAMINER	
Michael D. Harris KLEINBERG & LERNER, LLP Suite 1080 2049 Century Park East Los Angeles, CA 90067-3112			NGUYEN, TAM M	
			ART UNIT	PAPER NUMBER
			3764	
			DATE MAILED: 06/30/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/801,735	BARROWS, STACY
	Examiner Tam Nguyen	Art Unit 3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 4 is objected to because of the following informalities:

In claim 4, on lines 4 and 5, the phrase "top portion" and "bottom portion" are disclosed but it should read, --top surface-- and --bottom surface--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 recites the limitation "the beginning of the radius" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

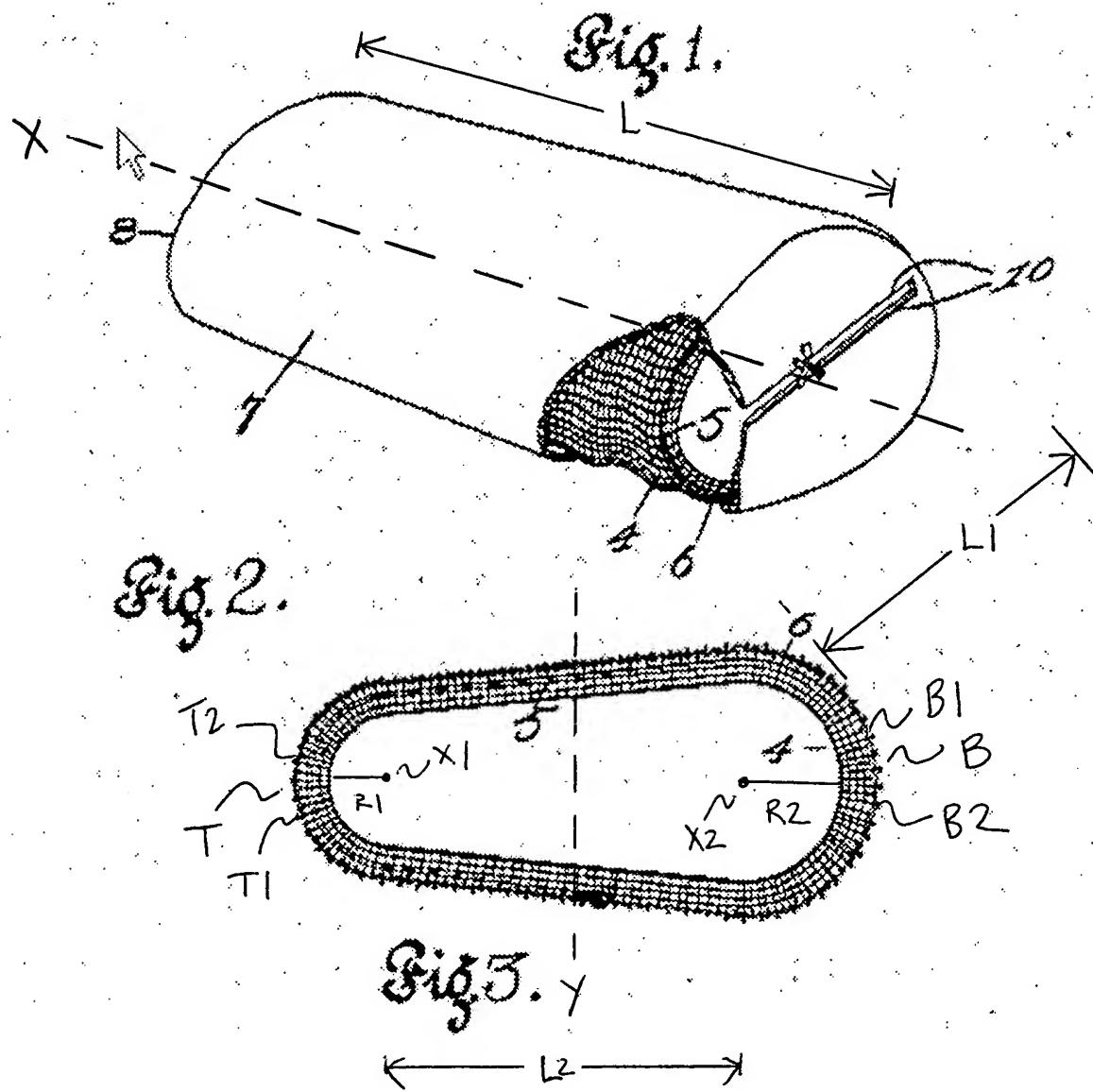
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ranz (10801735).

3. As to claims 1-4, 6 and 8, Ranz discloses an exercise device comprising an elongated roller formed of a compressible material having an outer surface, an axis (X),

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a curved top (T) one one side of the axis, a curved bottom (B) on the other side of the axis and a length (L) in the direction of the axis wherein the curvature of the curved top (T1) of the roller is different than the curvature of the curved bottom (B1) of the roller and the length is substantially greater than the maximum distance (L1) between the top and bottom of the roller (see Figs. 1 & 2 below). Ranz also discloses that the curvature of the top and bottom portions are each circular but the radius (R1) of the curvature of the top portion is different from the radius (R2) of curvature of the bottom portion. Ranz further discloses that the roller has a first axis (X1) and a second axis (X2), a first sectional plane (Y), a top surface (T2) curved about the first axis and a bottom surface (B2) curved about the second axis the length being substantially greater than the distance (L2) between the first and second axes. Ranz also discloses that the top surface has a circular cross section and the bottom surface has a circular cross section wherein the radius of the top and bottom surfaces are different. Ranz also discloses that the length of both radii is less than the length of the roller in the direction of the axis. Ranz also discloses that the roller is adapted to rest normally only on the top or bottom surface, such as when the roller is rested against a headboard so that the roller is rested on either the top or bottom surface.



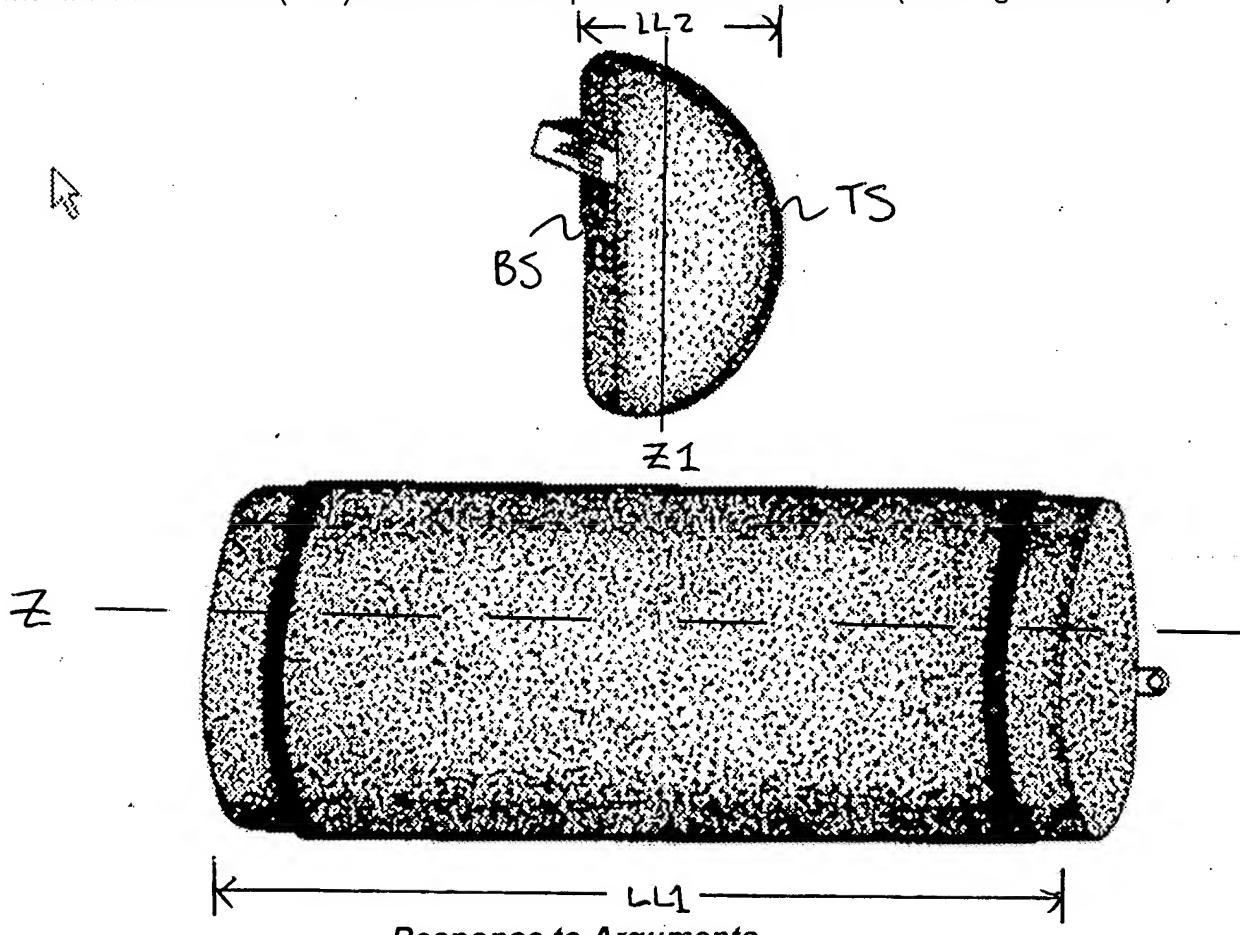
Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Evans

(D330,989).

4. As to claim 5, Evans discloses an elongated roller formed of a compressible material having a longitudinal axis (Z), a first sectional plane parallel to the axis (Z1) that divides the roller into a top and bottom, and a length (LL1) in the direction of the axis, the top having a top surface (TS) and a bottom having a bottom surface (BS) and

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means (the outer shape of the roller) for balancing the roller on at least the bottom surface and for changing the balance of the roller depending on whether the top surface or the bottom surface is facing upward wherein the length is substantially greater than the maximum distance (LL2) between the top and bottom surfaces (see Figures below).



***Response to Arguments***

5. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection. Furthermore, applicant's arguments filed April 19, 2005 have been fully considered but they are not persuasive. Ranz may be a pillow but it is elongated and can be described as a roller since it is capable of being rolled.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4778. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332